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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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ROSS WEIL and BRETT ROYCE,	:	
	:	Hon. Deborah A. Batts
Plaintiffs,	:	
	:	07 Civ. 7748
- against -	:	
	:	<b>DECLARATION</b>
AMERICAN UNIVERSITY,	:	<b>UNDER 28 U.S.C. §1746</b>
	:	
Defendant.	:	
-----	X	

I, Abbey Silberman Fagin, declare as follows:

1. I am employed as the Senior Director of Development at American University, defendant in the above-entitled action. I have personal knowledge of the facts and circumstances stated below, and am competent to give this Declaration.
2. American University is a not-for-profit corporation, organized under the laws of the District of Columbia, with its principal place of business located at 4400 Massachusetts Avenue, NW, Washington, D.C.
3. American University publishes a university magazine, called *American* (the "Magazine"), three times each year.
4. Employees of the University write the articles and perform the editing and layout of the Magazine in the offices of University Publications and Development & Alumni Programs, principally located on the University's Tenley campus in Washington, D.C.

5. After the University completes the writing, editing, and layout of the Magazine in Washington, D.C., it is printed by United Litho, located in Ashburn, Virginia.

6. Once the Magazine is printed, United Litho addresses each publication being mailed domestically and to Mexico. These volumes are then mailed by the United States Postal Service from Dulles, Virginia. International editions are labeled, packaged, and shipped by DHL Global Mail (formerly Deutsch Post Global) located in Herndon, Virginia.

7. The University did not employ any individuals and was not under contract with any company located in New York State with respect to the writing, editing, layout, printing, or mailing of the Spring 2007 issue of the Magazine, or for any other function associated with the distribution of the Magazine.

8. The Magazine is distributed to alumni of the University, who automatically begin to receive the Magazine following graduation, as well as to parents of current undergraduate students, staff, faculty, emeriti faculty, and selected current and former donors.

9. There is no subscription paid for receipt of the Magazine.

10. The approximate mail circulation of the Magazine is about 97,000 recipients in numerous states within the United States and in a number of foreign countries.

11. The Magazine is not available on newsstands, nor does the University circulate it to people unaffiliated with the University.

12. Although the Magazine regularly contains information regarding the University's fundraising programs and has general appeals for support, there were no direct solicitations for donations in the Spring 2007 issue of the Magazine.

13. University merchandise, gear or memorabilia is not advertised in or available for purchase through the Magazine, and the Magazine does not serve as a sales catalogue in any way.

14. The Magazine contains: school news; stories about athletics; profiles and feature stories about faculty and their research, alumni, academic programs, service activities, fundraising programs and priorities; and an occasional student profile.

15. The "Class Notes" section of the Magazine contains very short profiles of alumni, which have been sent in to the University by e-mail, over the Internet through the University's website, by regular mail, or have been summarized from news-wire services, press releases, newspapers and trade journals.

16. The materials, files, documents, and equipment that the University uses in compiling the "Class Notes" section of the Magazine are maintained in Washington, D.C.

17. The University does not have a license to do business in the state of New York and does not have an agent for the receipt of service of process in the state of New York.

18. The University maintains no offices or employees within the state of New York.

19. From time to time, the University will send representatives to the state of New York to attend college fairs, scout for sports teams, conduct interviews of prospective students, offer social, educational and career-networking programs to alumni, and visit prospective donors just as it does in any other state, and just as most universities do. However, the University performs none of these activities for the purpose of the publication of the Magazine.

20. The University is not a party to a contract with either Ross Weil or Brett Royce.

21. The University owns a tract of land in the state of New York, measuring about one-half acre, which was bequeathed to the University by a donor. However, the University does not own, use, or possess this land in connection with the publication of the Magazine.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on October 18, 2007.

  
Abbey Silberman Fagin